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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TEKION CORP.,
Plaintiff,
v.
CDK GLOBAL, LLC,
Defendant.

Case No.: 3:24-cv-08879-JSC

CDK GLOBAL, LLC,
Plaintiff,
v.
TEKION CORP. and INDESIGN DATA, LLC,
Defendants.

Case No.: 3:25-cv-01394-JSC

**DECLARATION OF ARMEN
NERCESSIAN IN SUPPORT OF
[PROPOSED] STIPULATED
PROTECTIVE ORDER**

Judge: Honorable Jacqueline Scott Corley

1 I, ARMEN N. NERCESSIAN, declare as follows:

2 1. I am an attorney duly licensed to practice in the state of California and admitted to
3 practice before this Court. I am an associate at the law firm Fenwick & West LLP, counsel of
4 record for Tekion Corp. I submit this declaration in support of the [Proposed] Stipulated Protective
5 Order in the related cases *CDK Global, LLC v. Tekion Corp. and InDesign Data, LLC*, Case No.
6 25-01394-JSC, and *Tekion Corp. v. CDK Global, LLC*, Case No. 24-08879-JSC. I make this
7 declaration based on my own personal knowledge and could competently testify to the statements
8 if I were called upon to do so.

9 2. The Court's Standing Order provides that "[p]arties who seek a protective order or
10 order regarding discovery of electronically stored information ('ESI') must, when practicable, use
11 one of the model stipulated orders" available on the District's website. It further provides that the
12 "[p]arties must file one of the following with any proposed protective order or order regarding
13 discovery of ESI: (a) a declaration stating that the proposed order is identical to one of the model
14 orders except for the addition of case-identifying information or the elimination of language
15 denoted as optional; (b) a declaration explaining each modification to the model order, along with
16 a redline version comparing the proposed order with the model order; or (c) a declaration explaining
17 why use of one of the model orders is not practicable."

18 3. The Parties' proposed Protective Order is based on this District's Model Protective
19 Order for Litigation Involving Patents, Highly Sensitive Confidential Information and/or Trade
20 Secrets ("Model Order"). In accordance with the Court's Standing Order, the Parties submit the
21 Protective Order, this declaration explaining each modification to the Model Order, and a redline
22 identifying modifications to the Model Order (attached as **Exhibit A** to this declaration).

23 4. **Section 2.6:** The Parties modified this section to allow "Experts" not to exclude
24 past, current, or anticipated employees of a Party or a Party's competitor.

25 5. **Section 5.1:** The Parties made a streamlining deletion of language in the Model
26 Order that does not materially impact the process for designating protected material.
27
28

1 6. **Section 5.2(a):** The Parties modified this section to clarify the manner in which
2 natively produced documents should be designated as “Confidential” or “Highly Confidential” in
3 accordance with the Protective Order.

4 7. **Section 5.2(b):** The Parties removed the provision in this section requiring the
5 Parties to designate deposition testimony for protection under the Protective Order on the record.
6 The Parties further modified this section to provide for up to 21 days after receipt of a final
7 deposition transcript for the Parties to designate testimony for protection under the Protective Order.
8 In the experience of counsel, designating testimony on the record is inefficient.

9 8. **Section 6.1:** The Parties modified this section to clarify that any challenges to
10 confidentiality designations must be made in good faith, to prevent use of challenges to create
11 unnecessary and unjustified burdens.

12 9. **Section 7.1:** The Parties modified this section to include a provision allowing for
13 the sharing of discovery taken in the two related cases, *Tekion Corp. v. CDK Global, LLC* (3:24-
14 cv-08879-JSC) and *CDK Global, LLC v. Tekion Corp.* (3:25-cv-1394-JSC), in order to maximize
15 efficiencies in conducting discovery.

16 10. **Sections 7.2(a), 7.3(a):** The Parties modified these sections to eliminate a
17 requirement that the Parties’ Outside Counsel of Record (and the employees and agents of those
18 Outside Counsel of Record) must sign an “Acknowledgement and Agreement to Be Bound” in
19 order to review documents designated “Confidential,” “Highly Confidential – Attorneys’ Eyes
20 Only” or “Highly Confidential – Source Code” under the Protective Order.

21 11. **Sections 7.2(c):** The Parties introduced the distinction between an entity party and
22 a natural-person party and modified this section to clarify that a natural-person Receiving Party
23 who has signed the “Acknowledgement and Agreement to Be Bound,” may review documents
24 designated “Confidential” under the Protective Order.

25 12. **Section 7.2(f):** The Parties modified this section to allow mock jurors to whom
26 disclosure is reasonably necessary, and who have signed the “Acknowledgement and Agreement to
27 Be Bound” to review documents designated “Confidential” under the Protective Order.
28

1 13. **Section 7.2(g):** The Parties modified this section to remove a requirement that pages
2 of transcribed deposition testimony or depositions that reveal Protected Material must be separately
3 bound by the court reporter because, in counsel's experience, this requirement creates
4 inefficiencies.

5 14. **Section 7.3(b):** The Parties modified this section to remove a limitation that only
6 House Counsel without "involvement in competitive decision-making" may review certain
7 documents subject to the Protective Order, given the nature of the relationship between Parties.

8 15. **Section 7.3(f):** The Parties added this section to allow witnesses to whom disclosure
9 is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
10 to review documents designated "Highly Confidential – Attorneys' Eyes Only" or "Highly
11 Confidential – Source Code" during their depositions.

12 16. **Section 7.3(g):** The Parties modified this section to clarify that the Receiving Party
13 may disclose documents designated "Highly Confidential – Attorneys' Eyes Only" or "Highly
14 Confidential – Source Code" by the Producing Party to employees of the Producing Party.

15 17. **Section 7.4:** The Parties removed the required disclosure pertaining to House
16 Counsel before the Receiving Party may share "Highly Confidential – Attorneys' Eyes Only" or
17 "Highly Confidential – Source Code" documents with House Counsel. The Parties further modified
18 this section such that a Receiving Party seeking to disclose a Producing Party's "Highly
19 Confidential – Attorneys' Eyes Only" or "Highly Confidential – Source Code" documents to an
20 expert need not identify the categories of documents they seek to disclose, because in counsels'
21 experience that is burdensome and may invade attorney work product protection.

22 18. **Section 13.3:** The Parties added a non-substantive clarifying edit that does not
23 materially impact the process for filing protected material.

24 19. **Section 14:** The Parties modified this section to clarify that it is in the Receiving
25 Party's discretion whether to return all Protected Material to the Producing Party or destroy such
26 material after final disposition.

27 20. **Sections 12 & 15:** The Parties modified the Model Order to include a Rule 502(d)
28 Order to provide the maximum protection allowed by Rule 502(d), as contemplated by this

1 District's ESI guidelines. Under this agreement, the production of these materials does not
2 constitute a waiver of privilege in the current litigation or any other proceeding. A party may assert
3 a clawback requesting the return, destruction, or sequestration of inadvertently produced materials.
4 If the receiving party challenges the privilege claim, they must sequester the material and engage
5 in a meet-and-confer process. If unresolved, the matter may be brought before the Court, with strict
6 limitations on the use of the challenged material solely for the motion.

7 21. The remaining provisions of the Protective Order are identical to the Model Order
8 except for the addition of case-identifying information, the elimination of language denoted as
9 optional, the adoption of language denoted as "Alternative," and the renumbering of sections to
10 account for these edits.

11 I declare under penalty of perjury under the laws of the United States that the foregoing is
12 true and correct.

13
14 Executed on: April 16, 2025

/s/ Armen N. Nercessian
Armen N. Nercessian

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